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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,063	07/15/1999	JOHN CRESCENTI	COMMV.054A	4554
20995 7590 08/13/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER COLBERT, ELLA	
			ART UNIT 3694	PAPER NUMBER
			NOTIFICATION DATE 08/13/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/354,063

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

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3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. Claims 52-87 are pending. Claims 52-60, 65-73, and 78-86 have been amended in this communication filed 5/30/07 entered as Response After Non-Final Rejection.
2. The claim objections for claims 52-61, 65-74, and 78-86 have been overcome by Applicants' amendment and are hereby withdrawn.
3. The 35 USC 112, second paragraph rejection still remains as set forth here below.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 52, 65, and 78 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: Claim 52 has "a first network device" and a "second network device", however, there is not "the first network device" or "the second network device" any place in the claim limitations. Therefore, essential elements are missing from the claim limitations connecting the claims. There is a disconnect between claim limitations one and two and the other claim limitations three through four. Claims 65 and 78 have similar problems.

It is unclear and vague what happens to the "first network device" and the "second network device" after the "management software component operates" on them. The "first network device" and the "second network device" should be incorporated into the body of the claim again. Suggestion: incorporate the "backup and

retrieval data operating on a first network device and a second network device" from the preamble into the body of the claim.

Claim Rejections - 35 USC § 102(a)(e)

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 52-89 are rejected under 35 U.S.C. 102(e) as being anticipated by (US 6,112,239) Kenner et al, hereafter Kenner.

With respect to independent claims 52 and 78, Kenner discloses, A method for backup and retrieval of data, the method comprising: providing a management software component that operates on a first network device (col. 7, lines 18-28 and Fig. 1 (14 – Internet service provider and connected to (12) –first network device); providing a plurality of media software components communicatively coupled to the management software component, that operate on at least a second network device, each of the media software components being communicatively coupled to a storage device storing data (col. 14, lines 44-55 and fig. 1 (client program (36), browser (38) or configuration program are the plural media software components); selecting a media software component from among the plurality of media software components using the management software component (the browser (38) Fig. 1 is one of the selectable software components and gets selected by simply using it.); controlling the selected media software component using the management software component (the browser (38) is a software component controlled by the management software component (14) because it is a service provider controlling content to the browser (38)); controlling

backup and retrieval of data to the storage device using the selected media software component which comprises at least one software module configured to control backup and retrieval of data to the storage device (a browser (38) is the selected component which controls the retrieval of data once the data has been successfully retrieved, it is backed up on the client device; and recording a physical address indicating a location of the data on the storage device using the at least one software module comprising an indexing software module configured to record a physical address on the storage device (the browser (38) inherently records an IP address temporarily by displaying it to the user in the browser window. Some browsers also store cookies having IP addresses. These IP addresses are the recorded physical addresses. The software instructions which cause the IP address to be displayed in the browser window, or the instructions to collect cookies would be the indexing software. An index can be as little as one line of recorded information, and if you have instructions that can record the one line, you have indexing software).

Claim 65, Kenner further discloses a plurality of network devices (col. 8, lines 20-37 (configuration utility (34) and client program (34) and browser (38) and the media software components further capable of controlling backups to the storage device). See above for claims 52 and 78.

With respect to claims 53, 66, and 79, Kenner discloses, further comprising controlling backup and retrieval of data to the storage device using the selected media software component comprising at least a second software module configured to control the backup and retrieval of data to the storage device, and to manage the physical transfer of data to and from the storage device using the second software module comprising a data mover software module configured to manage the physical transfer of data to and from the storage device (the media software component is the client

program (36) in Fig. 1 and the second software module is the configuration utility (34) see col. 7, lines 18-66 and col. 8, lines 7-19 and the data mover is in Fig. 4 (120, 122, 124, 126, 128, 130, 132, 134, 138, 140, 142, 144, and 146 and col. 17, line 44-col. 19, line 50).

With respect to claims 54, 67, and 80, Kenner discloses, comprising backup and retrieval of data to the storage device using the selected media software component comprising at least a second software module configured to control the backup and retrieval of data to the storage device and physical media of the storage device using the second software module comprising a library software module configured to control the physical media of the storage device (col. 13, lines 45-63).

With respect to claims 55, 68, and 81, Kenner discloses, further comprising coordinating usage of the storage device using the management software component comprising at least a second software module configured to coordinate usage of the storage device (this dependent claim is rejected for the similar rationale as given above for claims 52-54).

With respect to claims 56, 69, and 82, Kenner discloses, further comprising storing backup and retrieval preferences of a software application using the second software module comprising an application software module configured to store backup and retrieval preferences a software application (this dependent claim is rejected for the similar rationale as given above to claims 52-55).

With respect to claims 57, 70, and 83, Kenner discloses, further comprising tracking the location of data across library media using the second software module

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comprising an archive software module configured to track the location of data across library media (col. 13, lines 45-63 and also for the similar rationale as given above for claims 54-56).

With respect to claims 58, 71, and 84, Kenner discloses, further comprising managing system processes using the second software module comprising a jobs software module configured to manage system processes (col. 8, lines 20-56).

With respect to claims 59, 72, and 85, Kenner discloses, further comprising tracking usage of the storage device using the second software module comprising a media usage software module configured to track usage of the storage device (col. 8, lines 7-36).

With respect to claims 60, 73, and 86, Kenner discloses, further comprising coordinating the transfer of data between system software components, software modules, and the storage device using the second software module comprising a data transfer software module configured to coordinate the transfer of data between system software components, software modules, and the storage device (col. 8, lines 37-56).

With respect to claims 61 and 74, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 62 and 75, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 63 and 76, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 64 and 77, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claim 87, this dependent claim is rejected of the similar rationale as given above for claim 52.

Response to Arguments

8. Applicant's arguments filed 5/30/07 have been fully considered but they are not persuasive.

Issue no. 1; Applicants' argue: the Applicants' disagree with the 35 USC 112 second paragraph rejection of claims 52, 65, and 78 because claim 52 states "providing a management software component operating on a first network device" (emphasis added) and as disclosed in the Specification and drawings, the phrase "operating on a first network device" means the management software resides or is executed on the first network device. The same reasoning applies for the claimed "plurality of media software components ... operating on at least a second network device have been considered but are not persuasive. Response: "The management software component residing or executing on the first network device" is not found in the claim limitations. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Issue no. 2: Applicants' argue: Applicants' respectfully submit that it is irrelevant what happens to the first and second network devices after the management software component and media software components respectively operate (or reside) on them

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has been considered but is not persuasive. Response: To operate on them, broadly interpreted means an operation of some type is performed. It would be better and clearer to recite "the first and second network devices after the management software components and media software components reside on them".

Issue no. 3: Applicants' argue: Kenner does not disclose the method of claim 52 and furthermore, Kenner does not disclose that the ISP (14) (Kenner's "management software component") controls the selected media component although the Office Action suggests that the ISP (14 may control content being sent to the browser (38) (Kenner's selected media software component"), Kenner does not disclose that the ISP controls the browser (38) in anyway and thus, the claim limitation concerning the second network device does not appear to be disclosed by the Kenner system has been considered but is not persuasive. Response: The browser (38) is a system component controlled by the management software component (14) because it is a service provider controlling content given to the browser. A browser (38) is the selected component which controls the retrieval of data and once the data has been successfully retrieved, it is backed up on the client device. See col. 7, lines 21-25 which recite "the ISP can host additional user terminals such as a second user terminal" and col. 7, lines 33-34 and col. 8, lines 28-33.

Conclusion: The Examiner is entitled to give limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

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During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).<

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Inquiries


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 2, 2007


ELLA COLBERT
PRIMARY EXAMINER